IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 923 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 195 : NO

JJJJ

Sessions Judge, Vadodara is under challenge.

#. The brief facts giving rise to this revision are as under :-

The respondent nos.1 to 7 were the plaintiffs, whereas petitioner no.1 was the defendant no.1 in Regular Civil Suit No.128/1973, which was pending in Civil Court, Junior Division, Karjan. It was a suit for declaration and prohibitory injunction against the defendants. Written statement was filed by the defendants and the suit was fixed for hearing on 2-11-1979. Originally, engaged advocate of the plaintiff remained absent on that day, hence the plaintiff engaged two other advocates. Adjournment application moved by the plaintiff was dismissed and the suit was proceeded under Order-17 Rule-3 of CPC. The suit was dismissed on 2-11-1979. Feeling aggrieved, the plaintiffs filed Regular Civil Appeal No.369/1979. The said appeal was dismissed on 5-11-1981. Thereafter, Second Appeal No.436/1982 was filed in the High Court by the unsuccessful plaintiffs. The said Second Appeal was subsequently withdrawn on 18-8-2000. Prior to that, Civil Misc. Application No.7/1981 was filed by the plaintiffs under Order-9 Rule-9 of CPC for restoration of the suit dismissed under Order-17 Rule-3 of CPC. This was done on 30-11-1981. The said application was dismissed on 31-12-1982, on the ground that the application was time barred and there was no merit in the said application.

#. Feeling aggrieved, the plaintiffs preferred Regular Civil Appeal No.98/1983 against the said order dated 31-12-1982. The said appeal was allowed on 28-2-1985. It is this order which is under challenge in this revision.

#. Shri JM Patel, learned counsel for the revisionist and Shri Jayesh M.Patel representing Shri MI Patel have been heard.

#. Since the suit was dismissed under Order-17 Rule-3 of CPC and First Appeal was also dismissed and the Second Appeal filed by the plaintiffs was dismissed as withdrawn by the High Court, now the order under revision can not be allowed to stand because, if it is allowed to stand, it would amount to restoring the suit under Order-9 Rule-9 of CPC, whereas the order of dismissal in that suit was confirmed in First Appeal and the Second Appeal was dismissed as withdrawn. Consequently, the revision has to be allowed and is hereby allowed. The impugned order dated 28-2-1985 is set-aside. No order as to cost.

March 2, 2001. [D.C. Srivastava, J.]

/sakkaf